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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,821	11/24/2003	Douglas B. Wilson	114089.120	5355

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EXAMINER	
LUONG, VINH	

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/720,821	WILSON, DOUGLAS B.	
	Examiner	Art Unit	
	Vinh T Luong	3682	MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 July 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 July 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The Amendment filed on July 26, 2004 has been entered.

2. The drawings were received on July 26, 2004. These drawings are accepted by Examiner.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Raudebaugh (US Patent No. 3,884,092).

Regarding claim 1, Raudebaugh teaches a fatigue relieving/preventing apparatus associated with vehicular control means 18, 18', 18'' comprising:

a first section 17a, 21, 22, 30, etc. that connects to a predetermined portion of the vehicular control means 18, 18', 18''; and

a deformable section 15, 19, 25, 28, 32, etc. that connects to the first section 17a, 21, 22, 30, etc. that is capable of supporting at least a portion of a vehicular operator's body (i.e., an arm).

Claim 1 and other claims below are anticipated by Raudebaugh because Raudebaugh teaches each and every positive claimed element and its functional limitation. On the other hand, it has long been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 U.S.P.Q. 138 (CCPA 1946).

Regarding claim 2, the deformable second section 15, 19, 25, 28, 32, etc. is deformable in at least one direction when deforming pressure is applied to such deformable second section 15, 19, 25, 28, 32, etc.

Regarding claim 3, the deformable second section 15, 19, 25, 28, 32, etc. supports a portion of the vehicular operator's body when pressure from such body portion is applied in at least one direction.

Regarding claim 4, the vehicular control means 18, 18', 18'' is capable of controlling at least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 5, the deformable second section 15, 19, 25, 28, 32, etc. will return to an original first position after deforming pressure is removed therefrom because it is made of elastic material, such as, foam rubber. See, e.g., column 1, line 62 *et seq.*

Regarding claim 6, the portion of the body supported by the deformable second section 15, 19, 25, 28, 32, etc. includes at least a forearm, wrist, or hand.

Regarding claim 7, the first section 17a, 21, 22, 30, etc. extends a length of a predetermined portion of the vehicular control means 18, 18', 18''.

Regarding claim 8, the deformable second section 28, 32 includes at least two deformable second sections 28, 32 that each connect to the first section 30 (Figs. 8-11). *Ibid.*, col. 3, lines 12-38 and claims 1-4.

Regarding claim 9, the first section 17a, 21, 22, 30, etc. is deformable. Note that virtually anything will be deformed if enough pressure is applied to it. See the term "flexible" in *Fredman v. Harris-Hub Co., Inc.*, 163 U.S.P.Q. 397 (DC 1969).

Regarding claim 10, Raudebaugh teaches a fatigue relieving/preventing apparatus associated with a vehicular control means 18, 18', 18'', comprising:

at least two discrete first sections 30 that each connect to a predetermined portion of the vehicular control means 18, 18', 18'', and

a discrete deformable second section 28, 32 that connects to each first section 30.

Regarding claim 11, each deformable second section 28, 32 is deformable in at least one direction when deforming pressure is applied to each discrete such deformable second section 28, 32.

Regarding claim 12, each deformable second section 28, 32 supports a portion of the vehicular operator's body when pressure from such body portion is applied to it in at least one direction.

Regarding claim 13 the vehicular control means is capable of controlling at least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 14, each deformable second section 28, 32 will return to an original first position after deforming pressure is removed therefrom.

Regarding claim 15, the portion of the body supported by the deformable second section 28, 32 includes at least a forearm, wrist, or hand.

Regarding claim 16, the apparatus is adjustable for supporting different sizes or types of body portions (by, *e.g.*, adjusting the locations of the fastener means 30).

Regarding claim 17, each first section 17a, 21, 22, 30, etc. is capable of being formed integral with the vehicular control means 18, 18', 18''.

Regarding claim 18, each first section 17a, 21, 22, 30, etc. is capable of being detached from the vehicular control means 18, 18', 18''.

Regarding claim 19, each first section 17a, 21, 22, 30, etc. is deformable. *Fredman v. Harris-Hub Co., Inc., supra.*

5. Applicant's arguments filed July 26, 2004 have been fully considered but they are not persuasive.

Applicant argues:

> Raudebaugh teaches a first member (*i.e.*, a stiffening member") that connects to the vehicular control means (e.g.. steering wheel), and a deformable member (*i.e.*, a cushion strip) that connects to the first member. See Raudebaugh, Col. 1, lines 55-67 and Col. 2, lines 28-33. *The deformable member upon which the Examiner relies as rendering claim 1 anticipated just cushions the hand but in and of itself does not independently support the hand.* The proper member that the "deformable member" of the present invention should be compared is the stiffening member in Raudebaugh. Raudebaugh does not teach or suggest that the cushion strip is capable of independently supporting the weight of part of the operator's body as required by claim 1; nor does it teach or suggest that the stiffening member is deformable.
>
> Noting the foregoing, Raudebaugh does not teach a deformable section with a support capability according to claim 1 or 10, and, in fact, Raudebaugh teaches away from the present invention. Accordingly, the anticipation rejection should be withdrawn. (Emphasis added).

Our reviewing court states in *In re Zletz*, 983 F.2d 319, 321, 13 USPQ 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." *Texas Digital Systems Inc. v. Telegenix Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

In the instant case, the Examiner finds that Applicant's specification does not provide a special meaning to the term "a deformable section" in claim 1 or "a discrete deformable second section" in claim 10. Therefore, Rauderbaugh's section 15, 19, 25, 28, 32, etc. is corresponding

to Applicant's claimed deformable section. The Examiner respectfully submits that Raudebaugh's deformable member 15, 19, 25, 28, 32, etc. is "capable of supporting at least a portion of a vehicular operator's body" as recited in claim 1. In fact, in column 1, lines 5-18, Raudebaugh teaches:

> The present invention provides *a simple means for resting the forearms of the driver.* People who have an arthritic or rheumatic condition in their fingers, hands or arms will find this invention an aid to driving a car safely.
>
> An object of the present invention is to provide a cushion device which may be attached to the rim of a steering wheel of an automobile so that *the cushioning device is positioned for the driver to rest his forearms on the cushioning strip* while his hands grasp the upper forward rim of the steering wheel.

In addition, claims 1-4 of Raudebaugh expressly claim an armrest. Therefore, Raudebaugh does teach or suggest that the cushion strip 15, 19, 25, 28, 32, etc. is capable of independently supporting the weight of part of the operator's body (i.e., the arm) as required by claim 1.

More important, Raudebaugh's section 15, 19, 25, 28, 32, etc. is made of "foam rubber, either with or without a cover extending over the entire cushion strip, or it may consist of a cover completely filled with any known cushion stuffing." See column 1, lines 62-64. Further, *Webster's New World Dictionary of the American Language* (1968) at page 385 defines "deform" as "to change the shape by pressure or stress." The known cushion stuffing, such as, foam, down, feather, etc. is changed its shape following the biological contour of the user as seen in pillows. Therefore, Raudebaugh's section 15, 19, 25, 28, 32, etc. is deformable or capable of being deformed as recited in claim 1. In the same manner, Raudebaugh's cushion strip 28, 32 is

made of "any suitable cushion material" including foam rubber as seen in column 3, lines 4-38 and column 1, lines 62-64. Therefore, Raudebaugh's second section 28, 32 is also deformable or is capable of being deformed. Accordingly, Raudebaugh's second section 28, 32 reads on "a discrete deformable second section" as recited in claim 10.

With respect to Applicant's contention that Raudebaugh teaches away from the present invention, it is well settled that a reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant. *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131(Fed. Cir. 1994).

In the instant case, Raudebaugh leads one of ordinary skill in a direction convergent to the path that is taken by the Applicant because both Applicant and Raudebaugh teach the fatigue relieving support for the steering wheel. The line of development flowing from the Raudebaugh's disclosure is likely to be productive of the result sought by the applicant, i.e., to relieve fatigue. Therefore, Raudebaugh transparently does not teach away from the present invention.

For the reasons set forth above, the rejection under 35 USC 102 is maintained.

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 703-308-3221. The examiner can normally be reached on Monday, Tuesday, Wednesday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

August 5, 2004

Vinh T. Luong
Primary Examiner